

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal)	
Service)	
)	CC Docket No. 96-45
Rules Relating to High-Cost Universal)	
Service Support and the ETC Designation)	
Process)	
_____)	

To: Federal-State Joint Board on Universal Service

COMMENTS OF CENTURYTEL, INC.

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TABLE OF CONTENTS

<u>I.</u>	<u>SUMMARY</u>	1
<u>II.</u>	<u>THROUGHOUT THE NATION, RURAL CARRIERS FACE DIFFERENT CHALLENGES THAN NON-RURAL CARRIERS (JOINT BOARD PN AT ¶ 9)</u>	6
<u>III.</u>	<u>CETCS ARE LINING UP TO OBTAIN READILY AVAILABLE FEDERAL FUNDING, CAUSING A SPIRALING INCREASE OF THE HIGH-COST FUND (JOINT BOARD PN AT ¶¶ 9-14)</u>	9
<u>IV.</u>	<u>THE COMMISSION SHOULD ADOPT CLEAR NATIONAL RULES GOVERNING THE CETC DESIGNATION AND CERTIFICATION PROCESSES IN RURAL AREAS (JOINT BOARD PN AT ¶¶ 33-35)</u>	16
<u>A.</u>	<u>The Act Requires that the FCC or the State Commission Make an Affirmative Finding that Designation of Multiple ETCs Within a Particular Rural Study Area Serves the Public Interest</u>	17
<u>B.</u>	<u>The Commission Should Ensure that CETCs Offer All Supported Services, and Do So at a Level of Quality Comparable to What is Already Available in the Study Area</u>	20
<u>C.</u>	<u>The Commission's Rules Should More Strictly Enforce the Statutory Presumption That a Rural CETC Must Serve the Entire Study Area of a Rural ILEC</u>	25
<u>V.</u>	<u>CETCS SHOULD RECEIVE FUNDING BASED ON AN ANNUAL REQUIREMENT TO DOCUMENT THEIR OWN COSTS AND THEIR USE OF UNIVERSAL SERVICE FUNDS (JOINT BOARD PN AT ¶¶ 15-25)</u>	32
<u>A.</u>	<u>CETC Costs Are Different From ILEC Costs</u>	32
<u>B.</u>	<u>Disbursement of High-Cost Funds to CETCs That Do Not Have High-Cost Loops Violates Section 254 of the Act</u>	33
<u>VI.</u>	<u>CONCLUSION</u>	40

COMMENTS OF CENTURYTEL, INC.

CenturyTel, Inc. ("CenturyTel"), through its attorneys, hereby offers the following Comments in response to the Public Notice issued by the Federal-State Joint Board on Universal Service ("Joint Board") in the above-captioned proceeding.¹

I. SUMMARY

In order to preserve and promote universal service in this nation's rural communities, CenturyTel urges the Joint Board to recommend meaningful changes to the regulations and policies of the Federal Communication Commission ("Commission" or "FCC") related to the designation and funding of multiple eligible telecommunications carriers ("ETCs") in rural areas.

Rural incumbent local exchange carriers ("ILECs") are faced with substantial economic challenges compared to non-rural telecommunications carriers, stemming from relatively sparse population density and a small proportion of large business customers. Further, on average, rural consumers have lower income than non-rural consumers and can least afford higher telephone bills. Government policies to spur competition using high-cost funds, however, are at odds with the goals of universal service and are threatening affordable telephone rates in rural America. Further, Commission action in this proceeding is also critical due to the far reaching policy implications of the Commission's federal universal service rules on, among other things, the states' high-cost funds, inter-carrier compensation, access charge reform, and end-user rates.

¹ Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, FCC 03J-1, CC Docket No. 96-45 (rel. Feb. 7, 2003) ("*Joint Board PN*").

Increasingly, without regard for the inevitable escalation of ETC entry and demands on the universal service fund, states seem to be allowing indiscriminate designation and funding of rural CETCs without holding the CETCs accountable to the public interest goals of universal service. This permissive process is contrary to the Communications Act of 1934, as amended (the “Act”). In amending the Act in 1996, Congress set out to protect rural consumers by balancing the goal of promoting competition nationally with the co-equal goal of safeguarding universal service, especially in rural areas. For instance, the Act *requires* that the states and the Commission conduct a public interest inquiry prior to designating multiple ETCs in an area served by a rural carrier, even though it does not require this exacting standard in non-rural areas.² The Act also includes a presumption that a competitive CETC must commit to serve the entire study area of the rural ILEC – using its own facilities or a combination of those facilities and resale of another carrier’s services³ – in order to receive federal universal service funding, a presumption that can be rebutted only upon concurrence of both the state and the Commission after consultation with the Joint Board.⁴

Unfortunately, due in part to the leeway provided in the Commission’s rules, the FCC and the states have not strictly enforced the statutory distinction between rural and non-rural study areas. Despite what some regulators appear to believe, promoting competition for its own sake alone does not satisfy the Act’s public interest standard, especially in rural America: promoting competition is but one factor in a much more complex equation. Section 254 of the Act makes clear that the purpose of federal universal service funding is to advance universal

² 47 U.S.C. § 214(e)(2).

³ *Id.* § 214(e)(1)(A).

⁴ *Id.* § 214(e)(5).

service. Nowhere does the Act indicate that universal service funds should be used to spur competitive entry. Yet, many regulators have relegated universal service funding to a mere tool toward that end.

CETCs, understandably, are lining up to obtain this “free” universal service money, causing high-cost funding disbursed to CETCs to jump from less than \$1 million in 1999 to more than an estimated \$100 million in 2003.⁵ Further, this upward spiral in CETC funding is expected to accelerate. The average rural market already is served by three or more wireless providers,⁶ the largest of which do not yet receive federal support. CenturyTel’s experience shows that once one carrier is designated as a CETC, the rest of the competitive carriers in that market also will seek federal universal service dollars. For example, the Wisconsin Public Service Commission granted its first CETC certificate less than six months ago, and is now considering eight more CETC applications. *None* of the largest wireless carriers have sought ETC status yet, but the seventh largest carrier, Alltel, has done so in Alabama, Michigan, and Virginia. The “gold rush” is on.

At a minimum, the Commission should delineate specific requirements for designating ETCs in rural areas, and provide explicit federal guidance to state commissions for conducting the Act’s required public interest analysis. In particular, CenturyTel urges the Joint Board to recommend that the Commission adopt the following rules governing CETC eligibility:

⁵ Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), *Universal Service in Rural America: A Congressional Mandate at Risk*, at Table 3 (Jan. 2003) (“*OPASTCO USF Study*”).

⁶ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, 17 FCC Rcd. 12985, 13023 (2002) (“*FCC Annual Wireless Report*”).

First, the FCC should adopt clear national rules governing the CETC designation and certification processes. Prior to designating a new CETC, state commissions and (when applicable) the FCC must make an affirmative finding that providing federal funds to the competitive carrier will actually enhance service within a particular rural study area. Once designated, the services provided by the CETC should be monitored to ensure that customers are receiving the promised benefits. With so much focus on the size of the universal service fund, it is indefensible that CETCs are not held accountable for the use of federal high-cost support. FCC rules should require each CETC annually to demonstrate that it has used high-cost funds to improve and build out local exchange infrastructure, and to provide covered services throughout of the rural ILEC's study area.

Second, in order to receive federal high-cost funds, a rural CETC should be required to offer all supported services (including minimum local usage), and to offer services at a level of quality comparable to what is already offered by existing carriers in the rural service area. Regulators should ensure that, as a prerequisite to receipt of federal funds, each CETC could serve as the carrier of last resort in any given study area. CenturyTel asserts that this means that all CETCs should be required to provide unlimited local usage at a flat rate, just as is expected of the ILEC. The FCC and state commissions should consider whether a competing service provides a true competitive choice that can stand on its own, or, as is often the case with wireless service, is merely a complementary service offering, used by consumers merely to supplement their wireline service.

Third, the Commission's rules should require that a rural CETC must serve the entire study area of the rural ILEC, as presumed by the Act. Initially, this may be achieved using the CETC's own facilities as well as using resale or other means. Ultimately, however, the

Commission should require a carrier to use high-cost funds to expand its facilities and, within a reasonable period of time, serve the entire ILEC's study area on the CETC's own facilities.

CenturyTel's experience demonstrates that some regulators are far too lenient where a CETC's coverage is concerned, sometimes permitting a CETC to obtain funding for serving a single wire center. Western Wireless is pushing the envelope even further, and has recently requested that it be permitted to serve *partial* wire centers in Colorado. The Commission's rules should reflect the statutory presumption that a CETC serve the entirety of a rural ILEC's study area, and should further require the CETC to do so increasingly over its own facilities.

Fourth, the Joint Board should recommend that CETCs receive funding based on their own costs, rather than the costs of the ILEC. Today, CETCs are held to lower service standards and regulatory obligations than ILECs, leading to lower costs. CETCs thus receive a windfall when they receive universal service funding based on the higher costs of the ILEC. The current over-funding of CETCs does not serve the public interest and violates Section 254 of the Act. CenturyTel is particularly concerned that the mobile nature of wireless services, which may lead to wireless services being predominantly used outside of the rural area which the federal funding is intended to support. CETCs should not receive funding for serving a wireless customer unless the CETC can document that customer actually uses the service predominantly in a high-cost area. More generally, just as is required of CenturyTel and all other ILECs, the Joint Board should recommend that CETCs have an ongoing obligation to demonstrate eligibility for universal service support based on the CETCs' own documented costs of providing service.

CenturyTel respectfully submits that the above changes are necessary to uphold the requirements set forth in the Act and to ensure the continued viability of the universal service high-cost fund.

II. THROUGHOUT THE NATION, RURAL CARRIERS FACE DIFFERENT CHALLENGES THAN NON-RURAL CARRIERS (*JOINT BOARD PN AT ¶ 9*)

CenturyTel applauds the Joint Board's efforts to scrutinize the unintended effects of the current rules on the rural landscape. Rural service areas are different from non-rural areas. This is a point that CenturyTel has repeatedly made to the FCC and the states; while it may seem obvious, increasingly, the Commission and the states have lost sight of this difference. The Act, however, requires a unique balancing of public interest factors where policies may impact rural consumers.

The Act establishes that the goal of reliable, high-quality, safe, and ubiquitous telecommunications service is paramount.⁷ In many non-rural areas, competition from new entrants may further this goal. However, the Act also requires regulators to evaluate in a deliberate and thoughtful manner whether a competitor in a rural market will provide a beneficial alternative to the incumbent, or destabilize the fragile market, thereby hindering the delivery of universal service by *any* provider.⁸

The following statistics illustrate some of the special challenges facing rural carriers:

⁷ See 47 U.S.C. §§ 151, 254.

⁸ FCC Commissioner Michael Copps recently summarized the plight of rural communities and the Commission's grave responsibility to take special care when devising policies that will affect this nation's high-cost areas:

Rural carriers face unique and very serious challenges to bring the communications revolution to their communities. As we move forward on all of our proceedings, including, among others, universal service decisions . . . we just must do everything we can to make certain that we understand the full impact of our decisions on rural America. If we get it wrong on these rural issues, we will consign a lot of Americans to second-class citizenship.

Statement of Michael J. Copps, Commissioner, Federal Communications Commission, before the Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce, Feb. 26, 2003, at 4.

- The average population density in areas served by rural carriers is only 13 persons per square mile compared with 105 persons per square mile in areas served by non-rural carriers;⁹
- On average, multi-line business customers represent about 13 percent of total business lines served by rural carriers compared to over 21 percent of the lines served by non-rural carriers;¹⁰
- On average, special access services purchased by large users represent only about three percent of total interstate revenues for rural carriers compared to nearly 18 percent for non-rural carriers;¹¹
- On average, rural carriers serve only 1,254 customers per switch compared to over 7,000 customers per switch in non-rural areas.¹²
- Rural consumers have significantly less purchasing power than those in non-rural areas. The median household income in rural areas is \$40,600 compared to \$46,600 in non-rural areas and the median net worth in rural households is \$40,500 compared to \$61,000 in non-rural households.¹³

These statistics hold true for CenturyTel. For example, CenturyTel's rural ILEC service territory has a customer base with only approximately 10 lines per square mile on average nationwide.¹⁴ As a result, CenturyTel uses substantially more telecommunications plant to serve each of its customers than larger carriers do. CenturyTel serves its customers using relatively long loops, and serves only, on average, about 2,000 lines per rural exchange. Further, even the CenturyTel rural companies have a fair amount of diversity within their service areas. CenturyTel of Eagle, Inc., for example, which serves 53 wire centers, has total lines per wire center ranging from 96 to 8,679.

⁹ Rural Task Force, *The Rural Difference*, White Paper 2, Jan. 2000, at 8 ("RTF White Paper 2").

¹⁰ *Id.* at 10.

¹¹ *Id.*

¹² *Id.* at 11.

¹³ NECA, *Trends in Telecommunications Cost Recovery: The Impact on Rural America*, October 2002, at 11-13 ("NECA Report").

Because of these network realities, rural operating companies tend to have far higher common line and per-customer central office costs than non-rural carriers. At the same time, lower disposable income levels mean increases in local rates are more likely to adversely impact customers in rural areas than in urban areas.¹⁵ The differing customer base in rural areas compared to non-rural areas has a profound effect on the economics of competition.

The Rural Task Force described the implications of the different market characteristics faced by rural carriers as follows:

Most Rural Carriers serve primarily residential and very small business customers. Rarely are there large business customers present in rural areas. In instances where a large business customer is present, that single customer can account for disproportionate share of the Rural Carrier's business. *Competitive loss of that single customer could have a severe detrimental impact on the Rural Carrier's business and the rates of remaining customers.*¹⁶

The Rural Task Force's warning has great relevance to CenturyTel. Relatively attractive multi-line business customers are rare in the most rural areas. In several of CenturyTel's most rural exchanges, the loss of a single multi-line business customer would mean loss of 100 percent of CenturyTel's business customer base. Such an economic blow could impair the ILEC's ability to provide service to the residential customers located in the same exchange, and to do so at affordable rates.

¹⁴ Averaged over CenturyTel's rural and non-rural territories, CenturyTel has only 15 lines per square mile.

¹⁵ NECA summarized this situation well, stating, "The cost of serving customers in rural areas is much higher than in non-rural areas, while the ability of customers to absorb additional costs is much more limited." *NECA Report* at 13.

¹⁶ *RTF White Paper 2* at 30 [emphasis added]. See also, e.g., Alaska Communications Systems Group, Inc. *Ex Parte* Presentation in CC Docket Nos. 01-338, 96-98, 98-147 (Jan. 7, 2003) (discussing the wide disparities between the small rural ILECs in Alaska and larger carriers).

CenturyTel acknowledges that competition is inevitable even in its most rural service areas, but asserts that it is not always in the public interest for regulators to induce competitive entry in rural service areas using federal funds. That some rural ILECs may actually fail due to artificially induced competition “is not as remote as it once seemed.”¹⁷ The impact of competition has already become part of CenturyTel’s internal cost/benefit analysis in assessing investment opportunities. Other carriers have also testified to the need to curtail rural investment in the face of competition that enjoys subsidies not justified by costs.¹⁸ The Joint Board should recognize the economic realities of serving as carrier-of-last-resort throughout a high-cost study area, and reflect these unique challenges in making its recommendations to the Commission.

III. CETCS ARE LINING UP TO OBTAIN READILY AVAILABLE FEDERAL FUNDING, CAUSING A SPIRALING INCREASE OF THE HIGH-COST FUND (JOINT BOARD PN AT ¶¶ 9-14)

The rush to indiscriminately supply federal funds to competitive carriers in rural areas has placed the high-cost universal service fund at a crossroads. Federal officials recently have expressed alarm at the rate of growth of federal support overall.¹⁹ Senator Conrad Burns, in a hearing before the Senate Communications Subcommittee, recognized that universal service reform is “a matter of urgency” and that “action is necessary to help out our high-cost areas and

¹⁷ *OPASTCO USF Study* at 37.

¹⁸ *See, e.g., Alaska Communications Systems Group, Inc., Ex Parte Submission, Triennial Review*, CC Docket Nos. 01-338, 96-98, 98-147, at 10 (Jan. 6, 2003).

¹⁹ *See, e.g.,* Written Statement of Kathleen Q. Abernathy, Commissioner, Federal Communications Commission, on Preserving and Advancing Universal Service, Before the United States Senate Committee on Commerce, Science and Transportation, Subcommittee on Communications, at 3 (Apr. 2, 2003) (noting the rapid growth of CETC funding and the need for the present review); Remarks by Kevin J. Martin, Federal Communications Commission, to the Santa Fe Conference of the Center for Public Utilities Advisory Council, Santa Fe, New Mexico, March 18, 2003, at 6-7 (commenting on the jump in funding to CETCs and stating that “without quick action by the Joint Board and the Commission . . . pressure on the fund will only increase”).

ensure telecommunications for everybody in the United States.”²⁰ Also at the hearing, Senator Ernest Hollings observed that “[universal service is] now in terrible diminished condition, threatened” and affirmed his agreement that the need for reform is urgent.²¹

To this point, federal high-cost support²² has grown as part of a natural progression – the Commission has phased in the necessary mechanisms to ensure the sufficiency of funding to incumbent carriers, while interstate access charges have been declining. The current funding level also includes a one-time increase in 2001, when the Commission “re-based” the fund to bring support more in line with the costs of rural ILECs. Going forward, however, ILEC support is sure to level off and, unless the Commission takes swift action, CETC funding will overwhelm the high-cost fund. In fact, the Commission’s regulations ensure that growth of the portion of the high-cost fund allocated to ILECs is capped. Under the

²⁰ Hearing of the Communications Subcommittee of the Senate Committee on Commerce, Science and Transportation, *The Future of Universal Service*, Federal News Service, April 2, 2003.

²¹ *Id.* In a March 2003 speech Commissioner Martin reiterated his past and continued concerns with the use of universal service high-cost funds to support competition in rural areas:

When the FCC adopted its MAG order, I publicly questioned the use of universal service support as a means of creating “competition” in high cost areas. In expressing this concern, I questioned the wisdom of a policy that subsidized multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. I also warned that this policy may make it difficult for any one carrier to achieve economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning service fund. *Recent data appears to verify the urgency of this issue.*

Remarks by Kevin J. Martin, Federal Communications Commission, to the Santa Fe Conference of the Center for Public Utilities Advisory Council, Santa Fe, New Mexico, March 18, 2003.

²² By federal “high-cost support,” CenturyTel refers to the high-cost fund (“HCF”), which supports the intrastate portion of high-cost loops (rural and non-rural); long-term support (“LTS”), which supports the interstate portion of loop costs; local switching support (“LSS”), which supports high-cost switching for the smallest carriers; interstate access support (“IAS”), which replaces certain revenues previously collected by price cap ILECs through interstate access charges; and the interstate common line support (“ICLS”), which replaces revenues that were previously recovered by non-price cap ILECs through the CCL access charge element. In addition to high-cost support, the three other federal universal service programs consist of low income support, the schools and libraries program, and funding for rural health care. Those three programs are beyond the scope of this proceeding.

Commission's formula, the growth of the high-cost fund allocated to ILECs can rise only commensurate with inflation and line growth.²³ As the Commission is aware, ILEC lines have not been growing the past three years.²⁴ Standard and Poor's estimates that wireline carriers will experience "access line declines of at least 4% [in 2003], as wireless and cable offerings further penetrate U.S. households."²⁵ Similarly, NECA determined that growth of minutes of use for rural carriers dropped to 0.6 percent averaged over 2001 and was negative for several quarters in 2001 and 2002.²⁶

In contrast, CETC funding is not capped and appears on the verge of explosive growth. Based on data from USAC, OPASTCO estimates that high-cost support for all CETCs rose from approximately \$11 million in 2001 to an estimated \$107 million in 2003, *an increase of nearly 1,000 percent in only three years.*²⁷ Although CETC funding does not yet rival the funds disbursed to ILECs, CETC funding has grown by more than 10 times in only two years, and is the fastest growing segment of the universal service fund. Most striking, the *OPASTCO USF Study* estimates that, of the \$107 million in CETC funding, approximately \$102 million (95 percent) will go exclusively to wireless competitive carriers.²⁸

Unqualified designation and funding of CETCs has triggered a modern-day "gold rush" for wireless carriers to seek federal universal service dollars in rural areas throughout the

²³ See 47 C.F.R. §§ 36.603-36.604.

²⁴ ILEC total line growth flattened during 2000 and began falling during the first half of 2001. *Local Telephone Competition: Status as of June 30, 2002*, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, Table 4 (Dec. 2002); *see also*, *NECA Report* at Figure 26.

²⁵ Standard & Poor's, *Industry Surveys, Telecommunications: Wireline*, February 27, 2003, at 8.

²⁶ *NECA Report* at Figure 27.

²⁷ *OPASTCO USF Study* at Table 3.

country. CenturyTel finds itself at the vortex of this CETC cash grab. State regulatory commissions and the FCC have designated CETCs in CenturyTel's rural study areas in Alabama, Arizona, Colorado, Iowa, Louisiana, Michigan, Minnesota, New Mexico, Texas, Washington, and Wisconsin.²⁹ Now that many states have designated at least one ETC, the floodgates are open. For example, the Wisconsin Public Service Commission ("WPSC") designated its first wireless CETC in December 20, 2002.³⁰ Only three months later, on its March 27, 2003 agenda, the WPSC commenced consideration of *six* more CETC applications submitted by wireless carriers, composing nearly half of all agenda items the WPSC was set to consider that day.³¹ Similarly, in CenturyTel's Eagle study area in rural Colorado, three CETCs have already been

²⁸ *Id.*

²⁹ See, e.g. *Federal State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Area in the State of Alabama*, DA 02-3181, Memorandum Opinion and Order, at ¶ 16 (AL PSC rel. Nov. 27, 2002) ("RCC Alabama ETC Order"); *Application of Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e)(2) and A.C.C. R14-2-1203*, Docket No. T-02556A-99-0207, Decision No. 63269 (Ariz. Commerce Comm. rel. Dec. 15, 2000); *Western Wireless Holding Co., Inc.'s Application for Designation as Eligible Telecommunications Provider Pursuant to 4 CCR 723-41-8*, *Western Wireless Holding Co., Inc.'s Application for Designation as Eligible Telecommunications Provider Pursuant to 4 CCR 723-41-7*, Docket Nos. 00A-174T and 00A-171T, Decision on Exceptions (CO PUC Mailed Date May 4, 2001) ("Western Wireless Colorado ETC Order"); *Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. § 214(e)*, Utility Case No. 3026 (NM PRC rel. Feb. 12, 2002); *Application of Grande Communications Networks, Inc. for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to P.U.C. Subst. R. 26.418 and Eligible Telecommunications Provider (ETP) Pursuant to P.U.C. Subst. R. 26.417*, Proposal for Decision, SOAH Docket No. 473-03-1655, PUC Docket No. 26404 (TX PUC Apr. 23, 2003); *Petition of Yelm Telephone, et.al.*, Docket No. UT-970345 (WUTC Dec. 23, 1997); *Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier in Wisconsin*, Docket No. 8225-TI-102 (WI PSC Dec. 20, 2002).

³⁰ *Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier in Wisconsin*, Docket No. 1 8225-TI-102 (Dec. 20, 2002).

³¹ See Open Meeting Agenda - Thursday, March 27, 2003 at 10:30 a.m., available at <http://psc.wi.gov/event/openmeet/ag032703.htm>. The applications were filed by Metro Southwest, PCS, LLP, Brown County MSA Cellular Limited Partnership, Wisconsin RSA #3 Limited Partnership, Wisconsin RSA #4 Limited Partnership, Wisconsin RSA #10 Limited Partnership, Nsighttel Wireless, LLC, and Wausau Cellular Telephone Company Limited Partnership. In all, the WPSC is considering designation of eight additional CETCs.

designated (Western Wireless, Northeast Colorado Cellular, and San Isabel Telecom, Inc.), with a fourth CETC application (NTCH-Colorado d.b.a. Clear Talk) currently pending before the Colorado Public Utilities Commission (“Colorado PUC”).

Recent proliferation of competitive carriers in rural areas may, at first blush, appear counter-intuitive, especially in light of the widespread failure of competitive carriers even in relatively low-cost areas traditionally considered to be ideal for competitive entry.³² But quite the opposite is true. High-cost funds are seen as a revenue source to pad the wireless carriers’ bottom line. Unlike ILECs, which must demonstrate that high-cost funds are used to fund maintenance and expansion of the ILEC’s network facilities, CETCs have been able to use federal funding simply to bolster profits. The *Joint Board PN* cites to a Salomon Smith Barney report that found that wireless carriers treat high-cost funding as “an incremental revenue source and that such incremental revenue represents ‘almost all margin.’”³³ Competitive carriers have discovered universal service high-cost funds as an easy source of revenue.

³² As explained by OPASTCO in its recent study:

The telecommunications industry has experienced a financial collapse If this type of market failure can occur in the most urban areas of the country, where it seems logical that competition would be able to flourish, then funding competition in high-cost rural areas where the market cannot naturally support even one service provider clearly carries with it significant risks.

OPASTCO USF Study at ix. See also, *id.* at 28 (“Competitive entry that is motivated solely by the prospect of universal service support . . . unnecessarily swells the Fund and weakens the ability of the incumbent carrier to continue providing high-quality and reasonably comparable services and rates – especially to the most remotely located, highest cost customers”).

³³ *Joint Board PN* at n.43 (quoting Salomon Smith Barney, *Western Wireless (WWCA): USF Provides Upside for Our EBITDA* (Jan. 9, 2003)). Mr. Robert Orent, President and CEO of Hiawatha Communications, Inc., speaking to the Senate Subcommittee on Communications on behalf of the rural telephone company members of several rural industry groups,³³ summarized this situation, stating, “too many states have looked at [CETC designation] as a welfare opportunity to help their states, and have adopted an attitude that says, ‘If I can get free money from the federal government for my state, that’s in the public interest and that’s good enough.’” Hearing of the Communications Subcommittee of the Senate Committee on Commerce, Science and Transportation, *The Future of Universal Service*, Federal News Service, April 2, 2003.

Of particular concern is that the CETCs that have obtained funding until now have relatively few customers, and represent only a small portion of total wireless carriers that will likely seek ETC designation nationwide. *None* of the largest wireless carriers in the United States (*e.g.* Verizon Wireless, AT&T Wireless, Nextel, Sprint, T-Mobile, and Cingular) have applied for ETC status, although Alltel recently filed ETC applications in Alabama, Michigan and Virginia.³⁴ It is particularly troubling that it appears that Alltel was reluctant to seek such ETC status, and did so only “due to increasing financial pressures to seek such status.”³⁵ As more competitive carriers seek funding, the universal service high-cost fund is likely to continue to grow exponentially.³⁶ Further, on average, rural markets are already served by three or more wireless providers.³⁷ When any one of these providers in a rural area obtains CETC status, the others will *have* to also seek to obtain funding in order to stay price competitive with other wireless carriers.

When CETCs already serve a market for which they seek new funding from universal funding mechanisms, the CETC can significantly boost revenues, with no additional responsibilities. Commissioner Martin has acknowledged this as the “customer list” problem,

³⁴ See *Alltel Applications for Wireless ETC Status Raises Red Flags Among Rural Wireline Carriers*, TR DAILY, Apr. 25, 2003.

³⁵ *Id.*

³⁶ *McLean & Brown 2003 USF Report* at 4.

³⁷ *FCC Annual Wireless Report*, 17 FCC Rcd. at 13023. Even some of the least populous areas are extremely competitive. As one example, six wireless carriers currently compete for business in the town of Iberville Parish, which is small, very rural, and mostly swamp. See *CenturyTel Wireless, Inc. and CenturyTel, Inc., Request for Waiver of Cellular Cross-Interest Rule, Section 22.942 of the Commission's Rules*, 18 FCC Rcd 1260, ¶¶ 17-18 (rel. Jan 31, 2002) (describing the competition and terrain of Iberville Parish).

which applies mostly to wireless carriers.³⁸ A wireless CETC may obtain funding for its entire existing customer base – its “customer list” – in the relevant service area immediately upon certification as a CETC, regardless of whether the CETC has “won” any new customers.³⁹ Such a CETC designation thus will have an immediate multi-million dollar impact on the high-cost fund, with limited to no positive impact for consumers. For example, Cellular South License, Inc. received more than \$14 million in funding during its *first six months* of obtaining a CETC designation in Mississippi.⁴⁰ The immediate impact on the high-cost fund of one of the largest wireless carriers obtaining funding for their entire existing rural customer base would dwarf this figure. In such instances, the only definite beneficiary is the CETC, which receives an immediate universal service funding windfall for providing the same services it already provided, over the same facilities, to the same customers that it already served.

The Joint Board should be particularly concerned about the dramatic increase in the volume of applications for CETC designation in high-cost rural areas, and the potential for unprecedented growth in the fund. If regulators continue to apply the current standards (or lack thereof) for CETC designation, the state commissions can expect to soon be deluged with CETC applications. The ensuing strain on funding levels could threaten the very viability of the universal service fund. The Joint Board should act quickly to reform universal service in order to head off this growing crisis.

³⁸ Remarks of Commissioner Kevin J. Martin, Federal Communications Commission, to the Santa Fe Conference of the Center for Public Utilities Advisory Counsel, Santa Fe, New Mexico, March 18, 2003, at 6; McLean & Brown, *Issue Update, Special Edition, USF Portability – Getting it Right*, June 25, 2002, at 2 (“*McLean & Brown Portability Study*”).

³⁹ *McLean & Brown Portability Study* at 2.

⁴⁰ See 2002 Third Quarter and Fourth Quarter Appendices HC01, available at <http://www.universalservice.org/overview/filings/>.

IV. THE COMMISSION SHOULD ADOPT CLEAR NATIONAL RULES GOVERNING THE CETC DESIGNATION AND CERTIFICATION PROCESSES IN RURAL AREAS (*JOINT BOARD PN AT ¶¶ 33-35*)

CenturyTel faces significant competition throughout its various service areas and does not dispute that competition can benefit rural consumers, for example, when it spurs the deployment of new advanced services. The Act sets a higher bar, however, for determining whether a competitor should receive federal high-cost support. The Act requires that federal high-cost support be used for the purpose for which it is intended.⁴¹ And the Act requires that federal universal service programs be administered in a manner that takes into account the differences between what constitutes the “public interest” between rural and urban areas.⁴² Concerning the importance of this public interest analysis, Commissioner Adelstein recently reminded:

At the very least, we must ask whether granting ETC status to a competitive carrier will bring benefits to a community that it does not already have and what effect it will have on the overall size of the fund, and thus on the consumers’ bills. So, a threshold question is, does the benefit to the consumer outweigh the ultimate burden on the consumer? Although our decisions regarding access to funding must be competitively and thus technologically neutral, we cannot be neutral when it comes to the protection of the public interest. And I’m concerned that we haven’t been careful enough in ensuring that end users are not ultimately paying extra for forced or artificial competition.⁴³

Indeed, it is remarkable how easy it has been for a competitive telecommunications carrier to obtain federal high-cost funds.⁴⁴ As described below, CETCs receive little scrutiny at the initial

⁴¹ 47 U.S.C. § 254.

⁴² *Id.* § 214(e)(2).

⁴³ Remarks of Jonathan S. Adelstein, Commissioner, Federal Communications Commission, Before the National Association of Regulatory Utility Commissioners, February 25, 2003, at 3.

⁴⁴ McLean & Brown observed:

designation stage and even less when they annually certify that they are using federal support for the purpose for which it is intended. But the statute is more exacting. The Commission's rules should require more than lip service to Section 254(e) of the Act to ensure universal service funding is appropriately allocated.

A. The Act Requires that the FCC or the State Commission Make an Affirmative Finding that Designation of Multiple ETCs Within a Particular Rural Study Area Serves the Public Interest

The Act specifically *requires* that rural areas be treated differently from non-rural areas when it comes to universal service funding, and recognizes that it is not necessarily in the public interest to approve multiple ETCs in rural areas. Section 214(e)(2) of the Act states:

[u]pon request and consistent with the public interest, convenience, and necessity, the State commission *may*, in the case of an area served by a rural telephone company, and *shall*, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated the state Commission Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.⁴⁵

In addition, Section 253 of the Act generally preempts state barriers to competitive entry in non-rural markets, but provides for an exception for rural areas. Section 253 specifies that "it shall not be a violation" for a state to require a competing carrier to obtain an ETC designation prior to

In any other situation where a private entity sought tens, if not hundreds, of millions of dollars of scarce public funds, the burden of proving that such a grant would be in the public interest would fall squarely on [that entity's] shoulders. In the case of portability of universal service support, however, the burden appears to fall to the ILEC to prove that such a grant is not in the public interest.

McLean & Brown Portability Study at 7.

⁴⁵ 47 U.S.C. § 214(e)(2) [emphasis added].

serving in an area already served by a rural carrier.⁴⁶ The Joint Board should recommend that the Commission give these statutory requirements their full weight, and require that a balanced public interest analysis be conducted before the disbursement of funds to multiple carriers in rural areas can be authorized.

When the FCC or state regulators designate multiple carriers as CETCs in areas served by rural telephone companies for the sole purpose of promoting competitive entry, such rationale by itself is not sufficient to justify providing federal high-cost support to all those carriers, under the public interest standard set forth in Section 214(e)(2). Indeed, the Act does not even contemplate the use of universal funds for any purpose other than to preserve and advance universal service. Nevertheless, in some states, regulators have allowed their desire to induce competition to eclipse their duty to fully consider the public interest as required by the Act, and, in many cases, equated competition alone with the public interest standard.

The presumption underlying Section 214(e)(2) of the Act is that rural areas may not always be able to support multiple ETCs. As discussed further below, it is not in the public interest to disburse funds to competitive carriers who do not provide affordable services that meet the service and quality standards already available in the service area. When these concerns have been raised in ETC designation proceedings, regulators have often dismissed

⁴⁶ *Id.* §§ 253(a), (f). In yet another example of the Act's attempts to achieve a balance between competition and universal service, Section 251(f)(1) of the Act exempts rural telephone companies from certain interconnection and unbundling obligations that are applicable to non-rural ILECs. 47 U.S.C. § 251(f)(1). A state commission may remove this exemption for a particular rural carrier only upon finding, among other things, that such interconnection request "is not unduly economically burdensome." *Id.*

them, stating that such concerns are speculative.⁴⁷ However, proposals for CETC designation, which regulators are all too eager to support, however, often lack any analysis of whether such designation is likely to produce public benefit, particularly when a wireless carrier obtains high-cost funding for an area in which it already serves. The *McLean & Brown 2003 USF Report* observes:

The most frequently cited benefits for the support of multiple CETCs are the benefits generally associated with competition (i.e., more choice, lower prices, higher quality, efficiency incentives, etc.). Where a carrier is already providing service and competing successfully with the incumbent, regulators must take care to only consider the *incremental* competition that will come from new areas that the applicant would not be serving but for high-cost support, or new services that might be provided in performing the cost/benefit analysis.⁴⁸

When faced with this situation (identified above as the “customer list” problem), the high price tag should be considered in contrast with the negligible public benefit, prior to CETC designation.

The current strategy of designating any and all applicants as CETCs, and only later determining whether the designation benefits rural consumers, must stop. The Joint Board should recommend that the Commission establish detailed federal guidelines to ensure that it and the states engage in a complete public interest analysis *before* designating a carrier as a CETC, as required by Section 214(e)(2).

⁴⁷ See, e.g. *Western Wireless Colorado ETC Order* at 16 (finding in this May 4, 2001 order that the concerns of rural carriers regarding adverse financial impact would be mitigated by delaying the effective date in those rural carriers’ study areas until September 1, 2001).

⁴⁸ *McLean & Brown 2003 USF Report* at 5 [emphasis in original].

B. The Commission Should Ensure that CETCs Offer All Supported Services, and Do So at a Level of Quality Comparable to What is Already Available in the Study Area

It is time for the Commission to specify CETC eligibility criteria in its rules. The current practice has produced no consistent criteria. As a result, the lowest possible threshold of local exchange service has become the only prerequisite to getting federal dollars. This is in sharp contrast to the service specifications to which ILECs must adhere. It is time to tell CLECs what is required of them. Simply requiring CETCs to offer the minimum list of covered services is not enough.

CETCs should be required to provide comparable services (including local dialing plans) to those that the ILEC is required to offer. Wireless services can potentially provide substantial benefits to rural communities, but not if affordability and service quality are inferior and, thus, not a replacement service to the wireline services that are currently available. As explained by Commissioner Adelstein:

We need to encourage new and innovative technologies, and more efficient management, to maximize [the potential for wireless services in rural America]. At the same time, we shouldn't use universal service to support artificial competition from providers that don't provide the same or better service than what consumers already receive.⁴⁹

Similarly, Commissioner Copps recently cautioned with regard to wireless technologies:

[I]t strikes me as premature to decide that wireline and wireless services are more than complementary. Important differences exist in service quality, ubiquity, truth-in-billing rules and number portability practices.⁵⁰

⁴⁹ *Rural America and the Promise of Tomorrow*, Remarks of Commissioner Jonathan S. Adelstein, NTCA Annual Meeting and Expo, Phoenix, Arizona, February 3, 2003, at 4.

⁵⁰ Separate Statement of Commissioner Michael J. Copps, Concurring, *Application by SBC Communications Inc., Nevada Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Nevada*, FCC 03-80, WC Docket No. 03-10 (rel. Apr. 14, 2003).

Proof that wireless carriers do not effectively provide the same services as ILECs in the minds of consumers lies in the fact that only three to five percent of wireless customers have given up their land-line phone.⁵¹ Simply put, rural wireless carriers provide a valuable complement to wireline services, but it has not yet been demonstrated that they are a viable substitute to the ILEC's service.

CETCs should be prepared to step in as the carrier of last resort. A

comparability requirement is particularly important in light of the fact that all CETCs, regardless of the technology they employ, should be viewed as potentially the carrier of last resort for a service area.⁵² Section 214(e)(4) of the Act provides that any ETC, including any ILEC, may withdraw its ETC designation in areas that it serves in which there are multiple ETCs.⁵³ The State or Commission *shall* permit such withdrawal.⁵⁴ As noted in the *OPASTCO USF Study*, “[I]t is clear that Congress intended for state commissions and the FCC to make such [ETC] designations prudently and with the knowledge that a carrier, once designated, may be required to serve all the customers in the service area.”⁵⁵ CenturyTel submits that the cavalier nature of the CETC designation process in most states to date is indicative of the misperception of regulators that new CETCs merely complement ILEC services and that the ILEC will always act

⁵¹ *FCC Annual Wireless Report*, 17 FCC Rcd. at 13017.

⁵² Where CMRS services are a “substitute” for landline telephone exchange service, Section 332(c)(3) of the Act permits state commissions to impose on CMRS carriers any requirements imposed “on all providers of telecommunications services necessary to ensure the universal availability of telecommunications services at affordable rates.” 47 U.S.C. § 332(c)(3)(A). If CMRS carriers receiving ETC funding are not providing a “substitute” for landline local exchange services, they should not be getting high-cost funding at all. *See, supra*, notes 49-50, and accompanying text (statements of Commissioners Adelstein and Copps).

⁵³ 47 U.S.C. 214(e)(4).

⁵⁴ *Id.*

⁵⁵ *OPASTCO USF Study* at 37.

as a backstop to inferior CETC services. Considering the economic climate and severe financial hardship facing ILECs and the telecommunications industry as a whole,⁵⁶ this outlook is imprudent.

CETCs should be held to the same service quality standards as the ILEC. Rural wireless carriers often fall particularly short of the standards set by incumbent carriers in several respects. Most obvious, rural wireless services do not provide the same voice quality and day-to-day reliability as wireline services. Wireless telephones are far more subject to geographic terrain limitations, spotty reception, dropped calls, and overall inferior and inconsistent voice quality compared to wireline telecommunications services. Related to this, wireless carriers are often unable to provide reliable service in discrete areas, know as “dead spots,” throughout their service area. The Commission has held that such dead spots should not preclude CETC designation, in part, because the Commission anticipates that a wireless carrier will improve its service area coverage over time.⁵⁷ Unfortunately, the Commission does not require any concrete commitment by a CETC to eliminate dead spots, and does not have a process that would require CETCs to demonstrate elimination of dead spots subsequent to CETC designation.

CETCs should offer unlimited local usage at a flat rate. Another issue of particular concern is a failure by the states and the Commission to require CETCs to offer all

⁵⁶ See Shawn Young, *Telecom-Sector Debt May Claim More Victims*, THE WALL STREET JOURNAL, April 21, 2003, at C1, C7. This article reports on a study to be issued by Standard and Poor’s (“S&P”). According to the Wall Street Journal, the S&P study finds that a massive amount of debt will come due for telecommunications companies in the next few years and the ability of these companies to refinance “ranges ‘from worrisome to highly doubtful.’” Chief among those companies that could face significant difficulty is Qwest Communications, which must pay back \$6.5 billion in debt by 2005. *Id.*

⁵⁷ *RCC Alabama ETC Order*, *supra* note 29, at ¶ 16; *Federal State Joint Board on Universal Service, Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier*

services supported by the universal service fund, as required of all ETCs by the Act and Commission's rules.⁵⁸ In particular, the vast majority of wireless carriers are not required to commit to any minimum level of one of the required services: local usage. The Commission's has agreed with the Joint Board's finding that, "in order for consumers in rural, insular, and high-cost areas to realize the full benefits of affordable voice grade access, usage, of, and not merely access to, the local network should be supported."⁵⁹ The Commission has further determined that "setting an appropriate minimum level of usage for local service is essential in order to uphold the principle of competitive neutrality."⁶⁰ Despite these findings, the FCC has yet to define what this "minimum level" is,⁶¹ and the Commission has granted CETC applications without any concrete commitment of the wireless carrier to provide rural residents with sufficient local usage. For example, the Commission has consistently denied commenters' requests that CETC applicants be required to provide a detailed description of their planned universal service offerings.⁶² Without such disclosure, however, a carrier may be able to maximize universal service support payments by winning many customers with nearly free monthly access, but discouraging use of the service by charging extremely high per-minute usage charges.

The Joint Board should recommend that the Commission follow the lead of the Utah Public Service Commission ("Utah PSC"), and impose an *unlimited* local usage

Throughout its Licensed Area in the State of Alabama, DA 02-3317, Memorandum Opinion and Order, at ¶ 18 (AL PSC rel. Dec. 4, 2003) ("*Cellular South Alabama ETC Order*").

⁵⁸ *Id.* § 214(e)(1); 47 C.F.R. §§ 54.201, 54.101(a)(2).

⁵⁹ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 65 (1997) ("*First Report and Order*") (subsequent history omitted).

⁶⁰ *Id.*

⁶¹ See *Cellular South Alabama ETC Order* at n.64 (stating that the Commission has not specified a required number of minimum number of minutes of use).

⁶² See *Id.* ¶ 19; *RCC Alabama ETC Order* at ¶ 19.

requirement just as is required of the ILEC.⁶³ The Utah PSC's regulations also protect consumers by setting a rate ceiling for ETCs at an "affordable base rate" established by the Utah PSC.⁶⁴ To that end, in its order granting ETC status to Western Wireless, the Utah PSC conditioned receipt of non-rural universal service support on the carrier charging no more than a base rate equal to the ILEC rates previously set by the Utah PSC for the service areas at issue.⁶⁵ Moreover, the Utah PSC carefully weighed the public benefits of designating Western Wireless as an ETC in the rural areas of the state, and denied Western Wireless's application for ETC status in rural areas.⁶⁶

CETCs should be required to meet the challenges of evolving customer demands. Related to this, the Act defines universal service as "an evolving level of telecommunications services," and requires that the Joint Board and the Commission should revisit the list of supported services that are required to be offered by ETCs.⁶⁷ State commissions and the FCC should consider whether CETC applicants will be able to meet this evolving standard as required by the Act, especially considering that they often do not even meet *current* standards.

Last year, the Joint Board noted that one reason that it declined to recommend adding high-speed services to the list of supported services at this time is that many wireless

⁶³ *Petition of WWC Holdings Co., Inc., for Designation as an Eligible Telecommunications Carrier*, 2000 Utah PUC LEXIS 249, at 7 (2000) ("*Utah PSC Order*"), *aff'd sub nom. WWC Holding Co., Inc. v. Public Service Commission of Utah*, 44 P.3d 714 (Utah 2002) ("*WWC Appeal*").

⁶⁴ Utah Admin. Code R746-360-6(B).

⁶⁵ *See WWC Appeal*, 44 P.3d at 717.

⁶⁶ *Id.* To date, this is the only CETC denial of which CenturyTel is aware.

⁶⁷ 47 U.S.C. § 254(c)(1).

carriers are unable to provide such services and would therefore become ineligible for support.⁶⁸ In the same breath, however, the Joint Board voiced its agreement with the Commission's earlier direction that universal service policies should not "inadvertently create barriers" to access to advanced services and not "impede the deployment of modern plant capable of providing access to advanced services."⁶⁹ CenturyTel submits that the Joint Board should follow its stated policy and not allow wireless carriers' inability to provide a minimum level of services to be a barrier to the evolution of universal service. The Joint Board should recommend that the Commission and the states take into account whether a carrier can meet current and evolving standards of universal service when considering whether CETC designation is in the public interest.

CETCs should not be excused from the high standards to which rural ILECs are held. With the recommendation of the Joint Board, the FCC should define a standard for minimum local usage, as well as service quality and coverage, in order to ensure that support goes only to service offerings that meet a basic level of service, as contemplated by the Act.

C. The Commission's Rules Should More Strictly Enforce the Statutory Presumption That a Rural CETC Must Serve the Entire Study Area of a Rural ILEC

The FCC's rules should require that a CETC – rural or non-rural – serve the entirety of the service area for which the CETC designation is received.⁷⁰ Whereas the Act grants substantial flexibility for the state (or the FCC, where applicable) to unilaterally define the service area of a non-rural carrier, the Act specifies that the service area of a rural carrier "means such company's 'study area' unless and until the Commission and the States, after taking into

⁶⁸ *Federal-State Joint Board on Universal Service*, Recommended Decision, FCC 02J-1, CC Docket No. 96-45, ¶ 17 (rel. Jul 10, 2002).

⁶⁹ *Id.* ¶ 18.

account recommendations of the Federal-State Joint Board . . . establish a different definition of service area for such company.”⁷¹

The Rural Task Force explained the balance achieved by these statutory provisions as follows:

Congress recognized that unrestricted entry may not be beneficial to consumers in some rural ILEC areas. At the same time, Congress did not intend to deny rural consumers the benefits of competition when the state determines that competition is in the public interest. Notably, Congress did not place similar restrictions on areas served by non-Rural Carriers. This demonstrates a decision by Congress to allow policies pertaining to competitive entry and universal service reform for Rural Carriers to be appropriately different than for non-Rural Carriers.⁷²

The Joint Board should recommend that the FCC and the states presume that it is in the public interest for a CETC to serve the entirety of the rural ILEC’s study area, consistent with the Act, and critically analyze any requests to deviate from this standard. Further, while a CETC may initially provide these services through a combination of its own facilities and resale, the Commission and state regulators should require the CETC to demonstrate a continued infrastructure investment aspect of the annual certification process under Section 254(e).⁷³ In order to continue to receive federal funding, the CETC should be required to serve the entire study area over its own facilities within a reasonable time after CETC designation.

CETCs have strong incentives to serve only the relatively low-cost areas and most profitable customers in a study area, while the rural ILEC continues to be the carrier of last resort

⁷⁰ *Id.* § 214(e)(1).

⁷¹ *Id.* § 214(e)(5).

⁷² Rural Task Force, CC Docket No. 96-45, *Recommendation to the Federal-State Joint Board on Universal Service*, at 39 (rel. Sept. 29, 2000).

⁷³ *See, e.g.*, 47 C.F.R. 54.314 (setting forth the annual requirement for states to certify compliance with Section 254 to the FCC).

for its entire study area. This typically produces a windfall for the CETC. The CLEC receives support based on the ILEC's per-line costs under Section 54.307(a) of the FCC's rules, and the ILEC's per-line costs are averaged over its entire study area (or, where applicable, entire disaggregation zone), while the CLEC can target only the lines with lower costs than average for the study area. To ensure that CETCs do not cream-skim only the lowest-cost customers in a study area (or zone), the Act requires that a CETC serve the entire service area of a rural carrier, using its own facilities or a combination of its own facilities and resale of another carrier's services, and sets forth a presumption that the service area, in the case of a rural carrier, will equal the study area.⁷⁴ State regulators and the Commission, however, have exacerbated the potential for cherry-picking by routinely redefining the service areas of rural carriers to be smaller than the study area, further lowering the bar for CETC designation and relieving CETCs of the responsibility to extend service to the highest-cost customers of the ILEC's study area.⁷⁵ This ultimately will threaten the viability of the ILEC, the carrier of last resort for the *entire* study area, especially the portions *not* served by CETCs.⁷⁶

⁷⁴ 47 U.S.C. §§ 214(e)(1), (2), (5).

⁷⁵ See, e.g., Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R. § 54.207(c), for Commission Agreement in Redefining the Service Area of CenturyTel of Eagle, Inc., a Rural Telephone Company (filed Aug. 1, 2002). This petition was "deemed granted" without FCC action on November 25, 2003, 90 days after the petition was put on Public Notice. See 47 C.F.R. § 54.207(c)(3)(ii).

⁷⁶ The OPASTCO USF Study cautioned:

If ETC designation is granted for sections of a rural telephone company's study area, competitors will be incented to seek designation only in those sections where the profit potential is greatest and the cost to serve is lowest, while ignoring the less lucrative, higher-cost areas. This impedes the rural ILEC's ability to offer services throughout the study area that are reasonably comparable to those offered in urban areas and at reasonably comparable rates, and therefore is not in the public interest.

... The ability of competitors to creamskim through the adoption of more narrowly defined service areas does nothing to promote true universal service. It only increases the cost of

Rather than increase benefits to the public, redefinition of a rural ILEC's service area thus allows competitive carriers who have not demonstrated that they meet the definition of "high-cost"⁷⁷ to draw money from the universal service fund. Those carriers have not been required to meet the minimum obligations of a carrier-of-last-resort in a high-cost area.⁷⁸ This does not foster competition that will confer any benefit on consumers.

CenturyTel has faced redefinition of its service area in several states, and, despite strong opposition by CenturyTel and others, the requests for redefinition are invariably granted with only a cursory public interest analysis. Most recently, the Commission approved the redefinition of CenturyTel service areas in Alabama and Colorado, so that each CenturyTel wire center is a separate service area for CETCs.⁷⁹ In Colorado, the service area redefinition went into effect without the Commission even issuing an order and, in both Colorado and Alabama,

providing service to the remaining customers that only the incumbent has the obligation to serve. This, in turn, places at risk the incumbent's ability and incentive to continue investing in the infrastructure that brings high-quality services to these customers.

OPASTCO USF Study at 36.

⁷⁷ At present, the threshold for receipt of federal high-cost support is approximately \$23.00 per-loop, per-month (\$276 per year, which is 115 percent of the national average, set at \$240 per loop per year). *See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order, 16 FCC Rcd 11244, ¶ 56 (2001), *reconsideration denied*, FCC 02-171 (rel. Jun. 13, 2002).

⁷⁸ *See Comments of CenturyTel of Eagle, Inc., The Definition of the Rural Service Areas of Two Rural Telephone Companies in the State of Colorado; CenturyTel of Eagle, Inc. Application for Review*, CC Docket No. 96-45, at 12 (Feb. 21, 2003).

⁷⁹ Public Notice, *Pleading Cycle Established for Comments on Proceeding Regarding the Definition of the Rural Service Areas of Two Rural Telephone Companies in the State of Colorado*, DA 03-26, CC Docket No. 96-45 (Wireline Comp. Bur. rel. Jan. 7, 2003) ("*Colorado Review PN*") (stating that the petition had been deemed granted 90 days from that the Colorado petition to redefine CenturyTel's service area was placed on public notice); *RCC Alabama ETC Order* at ¶ 16; *Federal State Joint Board on Universal Service, Cellular South Alabama ETC Order* at ¶ 18.

the Commission is reviewing its decisions to approve the service area redefinitions.⁸⁰

Commission precedent demonstrates that service area redefinitions have broad applications and lower the bar for *all* subsequent CETC designations in the rural carrier's service area.⁸¹ This outcome, however, is contrary to Section 214(e) of the Act, which requires that each rural ETC designation must be reviewed and granted only if determined to be in the public interest.

For example, in the past, state commissions and the FCC have allowed redefinition of certain CenturyTel service areas to the wire center level, citing as a major factor the geographic limitations of the applicant's wireless license.⁸² It makes no sense that such a determination would also lower the service obligations for a wireline ETC applicant or a wireless carrier with a completely different wireless footprint. Once a service area is redefined to the wire center level for a particular carrier, however, all subsequent competing carriers, wireline or

⁸⁰ See Public Notice, *Pleading Cycle Established for Comments Regarding Applications for Review of Orders Designating Eligible Telecommunications Carriers in the State of Alabama*, DA 03-45, CC Docket No. 96-45 (Wireline Comp. Bur. rel. Jan. 10, 2003); *Colorado Review PN* at 1.

⁸¹ *Cellular South Alabama ETC Order* at ¶ 2 (holding that the CETC applicant's request to redefine CenturyTel's service area to the wire center level was "moot," because the Commission has "recently agreed to a redefinition of the service areas of these rural telephone companies").

⁸² Some CETCs claim this level of redefinition is necessary because they have limited networks. A carrier need not serve the entirety of a study area using its own facilities in order to qualify for ETC certification, however. The Act and the Commission's rules specifically provide that a CETC "shall be eligible to receive universal service support . . . and shall . . . [o]ffer the services that are support by federal universal service support mechanisms . . . either using its own facilities or a combination of those facilities and resale of another carrier's services." 47 C.F.R. § 54.201(d); see 47 U.S.C. 214(e)(1)(A). The FCC has recognized resale as a business model currently employed by wireless operators. *FCC Annual Wireless Report* 17 FCC Rcd. at 13025. Thus, the fact that a carrier does not have facilities throughout the study area should *not* a barrier to CETC designation throughout that entire study area.

wireless, need only to commit to serving a single wire center, even one that the competing carrier already serves, in order to obtain federal funds.⁸³

The Colorado PUC has gone yet a step further and has made a blanket decision to redefine the service areas for *all rural ILEC's* in the state, without any individualized analysis as to whether it is in the public interest to do so. Specifically, the Colorado PUC has committed to “undertake to disaggregate [all] rural study areas as soon as practically possible.”⁸⁴ This blanket action is contrary to the statutory obligation to base these determinations on the facts of the individual ILEC.⁸⁵ The Colorado PUC has rejected the suggestion that redefinition of all rural carriers’ service areas be anything other than automatic, stating, “[o]nce support has been disaggregated, it would be anti-competitive to defer the redefinition of service areas to a new . . . adjudicative proceeding.”⁸⁶ Further, it appears that the Colorado PUC is following through on its blanket redefinition policy; CenturyTel understands that the Colorado PUC is in the process of redefining service areas of at least six other rural telephone companies in the state.⁸⁷

⁸³ Reply CenturyTel of Eagle, Inc., Application for Review or, Alternatively, Petition for Reconsideration of CenturyTel of Eagle, Inc. (filed Dec. 17, 2002) (seeking review of the redefinition of CenturyTel’s service area to the wire center level).

⁸⁴ *Western Wireless Colorado ETC Order* at 23, 27 (this finding was opposed by the Colorado Telecommunications Association (“CTA”), which represented CenturyTel’s interest in the proceeding).

⁸⁵ 47 U.S.C. 214(e)(5) (“In the case of a *rural telephone company* “service area” means *such company’s* “study area” unless and until the Commission and the States taking into account recommendations of a Federal-State Join Board . . . institute a different definition of service area for *such company*” [emphasis added]).

⁸⁶ *Proposed Amendments to the Rules Concerning the Colorado High Cost Support Mechanism*, 4 CCR 723-41, and *the Rules Concerning Eligible Telecommunications Carriers*, 4 CCR 723-42, Ruling on Exceptions and Order Vacating Stay, Decision No. 01R-434T (adopted Mar. 18, 2002).

⁸⁷ The Colorado PUC has already submitted to the FCC applications to redefine the service areas of CenturyTel and Delta County Tele-Comm, Inc. See *Colorado Review PN* at 1 (seeking comment on the redefinition of the service areas of both carriers). In addition, CenturyTel understands that the Colorado PUC is reviewing service area redefinitions for the following rural carriers: Wiggins

Taking cherry-picking to an even higher level of absurdity, Western Wireless has now sought ETC designation *for partial wire centers*. Rather than reject Western Wireless's petition out of hand, the Colorado PUC has stated, "there is some indication from the FCC that it may allow a wireless carrier ETC status, notwithstanding that it serves only portions of rural incumbent local exchange carrier wire centers based on the wireless service area."⁸⁸ The application is now under consideration by the Colorado PUC.

Redefinition of a rural carrier's service area, absent any critical public interest analysis, achieves little, other than to remove any incentives for a CETC to serve the most rural parts of the relevant study area. In other words, it is contrary to the intent of the nation's universal service principles. In the case of Colorado, CenturyTel's Eagle subsidiary serves a diverse study area with many very small and high-cost wire centers. Although support has been disaggregated, CenturyTel still is the carrier-of-last-resort for the entire study area, unlike the wireless ETCs, who are targeting the customers they can serve most cheaply. Disaggregation, which a state commission may use to justify competition, is not a panacea for the rural ILEC. Disaggregation has inherent problems in rural areas due to the smaller numbers of lines over which costs are averaged. The Commission and the states should no longer rubber stamp such service area redefinition requests, which excuse competing carriers from the presumptive statutory prerequisite to receipt of federal high-cost support, providing service to the entire area served by the ILEC.

Telephone, Eastern Slope Rural Telephone Association, Inc., Plains Cooperative Telephone Association, Inc., Great Plains Communications, Inc., and Sunflower Telephone Co., Inc.

⁸⁸ *Application of Western Wireless Holding Co. Inc. for Designation as an Eligible Telecommunications Carrier*, Order Setting Matter For Hearing *En Banc*, Docket 03A-061T, at 4 (mailed Apr. 18, 2003).

V. CETCS SHOULD RECEIVE FUNDING BASED ON AN ANNUAL REQUIREMENT TO DOCUMENT THEIR OWN COSTS AND THEIR USE OF UNIVERSAL SERVICE FUNDS (*JOINT BOARD PN AT ¶¶ 15-25*)

A. CETC Costs Are Different From ILEC Costs

A CETC should be required to justify support based on its own costs and not the cost of the ILEC. Incumbent carriers have higher costs, commensurate with greater responsibilities, than competitive carriers. As the carrier of last resort, ILECs have the primary responsibility to serve the most rural, highest-cost communities in their study areas when no other carrier will. CLECs can pick and choose the customers they will serve. Due to the Commission's and states' practice of excusing CETCs from the statutory obligation to serve an entire rural study area, many CETCs can even receive federal high-cost funds while committing to serve only the most profitable parts of a high-cost study area. CenturyTel welcomes the responsibility to serve its most rural customers, but respectfully submits that it is this responsibility that significantly raises CenturyTel's costs above the costs of competitive carriers.

Wireline competitors that rely on unbundled network elements ("UNEs") have a significantly lower cost structure than do incumbent carriers. The FCC and state commissions have widened this disparity by requiring ILECs to lease UNE loops to their competitors at deeply discounted prices in some areas.⁸⁹ The problem of state-enforced deep discounts is wide-spread. In a recent letter sent by 22 United States Representatives (all members of the House Committee on Energy and Commerce's Subcommittee on Telecommunications and the Internet) to FCC Chairman Powell the Representatives voiced their concern that the current UNE pricing model, "permits CLECs to lease network elements at a price that is lower than what it cost ILECs to

⁸⁹ See, e.g., ACS of Fairbanks, Inc., Petition for Declaratory Ruling and Other Relief Pursuant to Section 254(e) of the Communications Act, Jul. 24, 2002.

purchase and maintain the elements.”⁹⁰ These discounts are among the significant regulatory advantages that competitive carriers have over ILECs. While TELRIC pricing rules are beyond the scope of this proceeding, the differences in costs between the rural ILEC and its competitors are relevant to the question of whether CLECs’ costs justify their receipt of high-cost support.

The Commission has recognized that wireless providers also can provide service at lower cost than wireline service providers, especially in high-cost rural areas. Specifically, the Commission stated:

fixed wireless systems can often be constructed in less time, at lower costs, and in smaller increments than wireline networks, especially in areas where the costs of wireline links may be especially high.”⁹¹

These analyses comport with the experience of CenturyTel, which itself was a rural wireless provider until the recent divestiture of its wireless subsidiary.⁹² In short, regulators should not assume that CETCs have the same cost as ILECs.

B. Disbursement of High-Cost Funds to CETCs That Do Not Have High-Cost Loops Violates Section 254 of the Act

The Commission’s regulations stipulate that a rural ILEC is eligible to receive high-cost support for a study area only if its embedded loop costs exceed 115 percent of the

⁹⁰ Letter from 22 Representatives to Michael K. Powell, Chairman, Federal Communications Commission, Jan. 29, 2003.

⁹¹ *Promotion of Competitive Networks in Local Telecommunications Markets*, Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 12673 (1999). In its portability study, McLean & Brown concluded:

[funding different technologies based on the ILEC’s embedded costs] can cause serious problems, since other technologies (particularly wireless) have markedly different cost structures, and wireline carriers experience costs that other carriers might not (e.g., presubscribed interexchange carrier, unlimited local usage, minimum bandwidth requirements, state regulatory costs, etc.).

McLean & Brown Portability Study at 7.

⁹² CenturyTel Completes Sale of Wireless Operations, Press Release (rel. Aug. 1, 2002).

national average loop cost, with the actual level of support based on the number of loops served and the degree to which the ILEC's actual costs exceed the average cost per loop.⁹³ The threshold for receipt of federal high-cost support is approximately \$23.00 per-loop, per-month.⁹⁴ A CETC, however, is eligible to receive universal service funding without demonstrating that its costs meet this threshold. Instead, the Commission's rules provide that a CETC will receive support based on the average per-line costs of the ILEC.⁹⁵ Thus, a CETC need not meet the Commission's standard for receipt of high-cost support in order to be eligible to receive high-cost support. The Commission has no way of knowing whether support is being used for the purpose for which it is intended – supporting high-cost loops.

Nor has the Commission established any requirements that would ensure that CETCs keep the commitments that they make in their CETC designation applications. CETCs currently are required only to provide the applicable state commission with a verified affidavit attesting that the universal service funds will only be used for the purposes intended, without any further documentation as to how the funds are actually used.⁹⁶ The Commission's rules should require each CETC to document to the states or the Commission, on an annual basis, that it uses universal service funds to recover the costs of advancing universal service (*e.g.*, to invest in local exchange infrastructure, improve quality of service, expand competition beyond the areas they currently serve, etc.). CenturyTel supports the efforts of the Missouri Public Service

⁹³ 47 C.F.R. § 36.631.

⁹⁴ *See, supra*, note 77.

⁹⁵ *Id.* § 54.307(a).

⁹⁶ *See, e.g.*, 47 C.F.R. 54.314 (setting forth the annual requirement for states to certify compliance with Section 254 to the FCC); *Commission Compliance with Federal Requirements to Certify Proper Use of Federal to Certify Proper Use of Federal Universal Service Funds by Telecommunications*

Commission (“MPSC”) to require more of CETCs. The MPSC staff has recognized that a mere one sentence affidavit is insufficient to ensure that universal service funds are being used properly. In order to protect the integrity of the fund, the MPSC is considering the requirement that CETCs “establish a separate general ledger account for the booking of federal universal service funds.”⁹⁷ The ledgers would be used “to compare the funds received for a specific year to the companies’ supporting documentation attesting that those funds would only be used for the purposes intended by the Act.”⁹⁸ The Commission’s rules should require this of all CETCs nationwide.

The mobile nature of wireless services provides additional policy concerns regarding the receipt of high-cost funds for services potentially provided in non-high-cost areas. The Commission’s rules require that mobile wireless ETCs “use the customer’s billing address for purposes of identifying the service location of a mobile wireless customer in a service area.”⁹⁹ However, the billing address associated with the phone may bear no relationship to where the phone is actually used. In an earlier proceeding, Smith Bagley, Inc. (“SBI”) suggested a possible solution to this problem. SBI stipulated to the New Mexico Commission that it would ensure that customers could not use more than 25 percent of the minutes included in the universal service plan outside of SBI’s ETC service area.¹⁰⁰ Pursuant to the stipulation, if a

Carriers, 2002 Alas. PUC LEXIS 114 (2002) (refusing to tie CETC certification to any data demonstrating that funds are being used for the purpose for which they are intended).

⁹⁷ *Proposed Rulemaking Regarding the Annual Federal Universal Fund Certification*, Order Finding Necessity for Rulemaking, Case No. TX-2003-0381 (effective May 9, 2003).

⁹⁸ *Id.*

⁹⁹ 47 C.F.R. § 54.307(b).

¹⁰⁰ *Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e)(2)*, Utility Case No. 3026, Recommended Decision of the Hearing Examiner and Certification of Stipulation, Exhibit A (“Stipulation”) (NM PRC rel. Aug. 14, 2002). The New Mexico

subscriber who takes the basic universal service plan were to use more than 25 percent of the minutes outside the ETC area for which support is intended, SBI could suspend service, although the subscriber would retain the option of using the phone for emergency and prepaid calls. CenturyTel endorses SBI's efforts to ensure that its wireless customers use supported services in the high-cost areas for which universal service support is intended. Wireless CETCs should not receive funding for serving a wireless customer unless the CETC can document that customer actually uses the service predominantly in a high-cost area.

By these examples, CenturyTel does *not* assert that wireline or wireless CETCs should be disqualified from receipt of high-cost funds across the board. However, CenturyTel urges the Commission to require CETCs to provide cost support documentation and to certify how support will be used in order to justify receipt of high-cost support based on the CETCs' own costs and business plans.

Aside from the policy implications of disbursing federal high-cost support to CETCs that are not held accountable for use of the funds, the disbursement of high-cost funds to CETCS that do not have high-cost loops violates Section 254 of the Act in several ways:

First, Section 254(e) requires that support be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."¹⁰¹ Pursuant to Section 254(e), it is unlawful for such carrier to receive and use high-cost support for the provision and maintenance of loops that do not meet the federal high-cost threshold. A CLEC that purchases UNE loops at a cost below the national high-cost standard, does not *have*

Commission, without explanation, eliminated from the Hearing Examiner's Recommended Decision the requirement that SBI comply with its mobility stipulation. *Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e)(2)*, Utility Case No. 3026, Final Order (NM PRC rel. Feb. 12, 2002).

high-cost loops, by definition. It, therefore, must be using high-cost support other than for the purpose for which the high-cost funds were intended.

Ironically, as the ILEC makes efforts to advance universal service, it increases its own as well as its competitors' funding eligibility. Each time an ILEC's cost-per-loop rises, such as if the ILEC invests in new loops to expand services in high-cost areas, the ILEC's per-line universal service support may increase (subject to the Commission's caps). Under the identical support rule, the CETC's per-line support will also rise commensurate with the ILEC's per-line support, even if the CETC's own costs remain unchanged. Similarly, as discussed further below, when a CETC wins a customer from an ILEC, the ILEC's aggregate cost to maintain the network over the entire study area remains close to the same, but total costs are averaged over fewer lines, increasing the ILEC's average per-line costs in the study area. Depending on the operation of the FCC's caps, the ILEC could get additional federal per-line support for its remaining lines. In such case, the CETC would be eligible to receive support at the higher per-line level, though it may experience no change or even a decrease in per-line costs. As such, as a CETC takes market share, the cost to the ILEC can snowball as each customer gained by the CETC raises the ILEC's costs-per-line – and, consequently, *all* CETCs' per-line support eligibility – further enlarging the CETCs' windfall, the overall size of the federal high-cost fund, and, ultimately, costs to consumers.

Second, disbursing funds to CETCs based on the ILEC's costs violates Section 254(b)(3)'s principles of affordability and reasonable comparability. Funding low-cost providers does not advance the goal of making sure that high-cost rural areas receive service at rates that are affordable and comparable to rates in urban areas. Worse, the synthetic competition created

¹⁰¹ 47 U.S.C. § 254(e).

by the CETC windfall *impedes* the ILEC's ability to provide comparable and affordable services throughout the study area. As stated, CETCs tend to concentrate their efforts on the lower-cost customers.¹⁰² Even if an ILEC disaggregates high-cost support throughout a study area, state laws typically require ILECs to average their local rates, and Section 69.3(e)(7) of the Commission's rules require ILECs to offer averaged interstate access rates throughout their respective study areas. Thus, when an ILEC loses relatively profitable customers to artificial competition, the ILEC's ability to charge affordable, comparable rates throughout the entire study area is compromised.

Third, CETC receipt of high-cost support for low-cost loops violates the principle set forth in Section 254(b)(5) that support should be "sufficient."¹⁰³ The United States Court of Appeals for the Fifth Circuit has observed that "excessive funding may itself violate the sufficiency requirements of the Act."¹⁰⁴ The court further noted that, "because universal service is funded by a general pool subsidized by all telecommunications providers — and thus indirectly by the customers — excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market."¹⁰⁵ Thus, allocating support for high-cost loops inappropriately to CETCs may cause the fund to swell beyond the size necessary to support high-cost lines, and violate the sufficiency principle.

Fourth, the funding of CETCs at the level of the ILEC, without requiring CETCs to justify receipt of funds, violates the principle of competitive neutrality. CETCs receive a

¹⁰² See discussion *supra*, p. 25-31.

¹⁰³ 47 U.S.C. 254(b)(5).

¹⁰⁴ See *Alenco v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000).

competitive advantage when they receive identical funding as the ILEC, but are subject to significantly lighter regulatory and service obligations. Not only does the actual receipt of identical funds violate the principle of competitive neutrality, the mere fact that ILECs are required to go through the process of justifying their costs while CETCs get a free ride also violates this principle. The Chairman of the Joint Board already has recognized this problem.¹⁰⁶ Similarly, the FCC has stated that, “It would be contrary to the principle of competitive neutrality to require certain classes of carriers subject to state ETC jurisdiction to receive state certification while allowing others to self-certify.”¹⁰⁷ As a practical matter, the nearly automatic process in many states for CETC receipt of high-cost funds is tantamount to self-certification. This stands in stark contrast to the scrutiny ILECs undergo both at the state and at the federal level.¹⁰⁸

In order to comply with Section 254 of the Act, this over-funding of CETCs must end. The Commission should fund CETCs based on the CETCs’ own costs and require the CETC to document its costs as a continuing prerequisite to receipt of federal high-cost support. On an annual basis, each CETC should be required to demonstrate through cost documentation

¹⁰⁵ *Id.*

¹⁰⁶ Commissioner Abernathy stated, “Requiring incumbent LECs, but no one else, to comply with costly regulations to open their books to competitors raises obvious questions of competitive neutrality.” Separate Statement of Commissioner Kathleen Q. Abernathy, *In the Matter of 2000 Biennial Regulatory Review – Comprehensive Review of Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, Amendments to the Uniform System of Accounts for Interconnection, Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Local Competition and Broadband Reporting*, 16 FCC Rcd 19911 (2001).

¹⁰⁷ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Order on Reconsideration, 17 FCC Rcd. 11472, ¶ 16 (2002).

¹⁰⁸ See 47 C.F.R. Part 54, Subpart D.

that it has used universal service support to improve and build out facilities in the service area for which the funds were intended.

VI. CONCLUSION

For the foregoing reasons, CenturyTel urges the Joint Board to recommend that the Commission provide explicit guidelines to ensure that the Commission and states implement the universal service high cost fund under a national standard. Pursuant to the Act, the states (or the FCC) should conduct a full public interest analysis prior to designating a carrier as a CETC. As part of the CETC designation process, the FCC and the state commissions should ensure that a rural CETC offers all supported services, including a sufficient amount of local usage, and does so at a level of quality that is equal to or greater than what is already available in the study area. The Commission and state regulators should also honor the Act's presumption that a CETC serve the entirety of a rural ILEC's study area, and should require the ILEC to build out its facilities throughout that study area within a reasonable period of time.

The Joint Board should also recommend that CETCs receive funding based on their own costs, and not the costs of the ILEC. The FCC and the states should examine whether a CETC's costs justify receipt of high-cost support. Finally, CETCs should have a continuing obligation to demonstrate that their costs and level of service justify receipt of scarce federal high-cost funds. In this way, the FCC and the states will administer the high-cost fund in compliance with the Act, advance universal service in rural communities, and control the increasing demands on the universal service high-cost fund.

Respectfully submitted,

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